

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

TERRI LYNN KERKSTRA

Debtors/

CASE NO.: SG05-20023

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

TRUSTEE'S MOTION TO APPROVE SALE
OF DEBTOR'S HUDSONVILLE, MICHIGAN RESIDENCE,
FREE AND CLEAR OF LIENS, AND TO AUTHORIZE
PARTIAL DISBURSEMENT OF SALE PROCEEDS

The attached motion has been filed with the Bankruptcy Court. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

If you want the court to consider your views on this matter, attend the hearing scheduled for June 28, 2006 at 10:00 a.m. at the United States Bankruptcy Court, One Division Ave., Grand Rapids, Michigan, Courtroom A.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least three business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney. **Please refer to Administrative Order 2004-06 (Mandatory Electronic Filing), effective January 1, 2005, for practices and procedures for filing pleadings with the court.**

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.



Notice returned to Larry A. VerMerris, Esq., for service. Court to serve Buyers' List (June 1, 2006-jm)

June 1, 2006

DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

/s/

BY: Jackie Malone, Deputy Clerk

NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the Clerk's office from the docket.

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In the Matter of:

Terri Lynn Kerkstra,

Debtor.

Case No. SG 05-20023

(Chapter 7)

Filed: October 15, 2005

**TRUSTEE'S MOTION TO APPROVE SALE OF DEBTOR'S HUDSONVILLE, MICHIGAN
RESIDENCE, FREE AND CLEAR OF LIENS, AND TO AUTHORIZE
PARTIAL DISBURSEMENT OF SALE PROCEEDS**

NOW COMES THOMAS A. BRUINSMA, Chapter 7 Trustee herein, by and through his attorneys, Day & Sawdey, P.C., pursuant to Bankruptcy Code § 363 and Federal Rules of Bankruptcy Procedure 2002 and 6004, and shows unto this Court as follows:

1. Your Movant is the duly-appointed, qualified and acting Chapter 7 Trustee in the above-entitled case, which was commenced by the Debtor through the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on October 15, 2005.

2. Included among the assets herein is the Debtor's residence commonly known as 2937 Pebblestone Drive, Hudsonville, Michigan 49426-8771, which property is legally described as:

The land referred to is situated in the Township of Georgetown, County of Ottawa, State of MICHIGAN, is described as follows:

Unit 36, Stoney Creek Condominium, according to the Master Deed dated December 28, 2003, recorded January 2, 2004, in Liber 4381, Pages 447-515, inclusive, Office of the Ottawa County Register of Deeds, as amended and designated as Ottawa County Condominium Subdivision Plan No. 369, and First Amendment to Master Deed recorded June 24, 2004 in Liber 4567, Page 787, and Second Amendment to Master Deed recorded October 13, 2004 in Liber 4670, Page 689, together with rights in general common elements and limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

PPN: 70-14-21-380-036

3. The Trustee has recently listed this property for sale with Craig Dunlap & Associates for a listing price

of \$119,900.

4. Christopher J. Smith (“Smith”) of 6370 8th Avenue, S.W., Grandville, Michigan 49418-9666, has offered to purchase the Debtor’s residence, as above-described, for the sum of \$119,900, which is a full-price offer, pursuant to the terms of a West Michigan Regional Purchase Agreement, a copy of which is on file with the Court and available for examination Monday – Friday, 8:00 a.m. – 4:30 p.m. The sale of such residence will be made pursuant to the terms thereof as well as the terms recited herein. To the extent that there is a conflict in such provisions, the terms of this Motion will prevail.

5. The proposed purchaser has no known relationship to the Trustee or his attorneys, to the Debtor, to the Bankruptcy Judge who might approve such proposed sale, nor any person affiliated with the Office of the United States Trustee.

6. The above-described residence is subject to a first lien in favor of Countrywide Home Loans, Inc. in the approximate amount of \$98,127.09, which mortgage has been duly recorded and is otherwise infeasible in bankruptcy. The second mortgage in favor of Peak Performances, LLC has been recently set aside, pursuant to a mortgage discharge, as an invalid post-petition transfer. As the Debtor had voluntarily transferred such property to Countrywide as well as Peak Performances, LLC, her \$2,500.00 claim of exemption thereon is inappropriate and is otherwise disallowed pursuant to the provisions of 11 USC § 522(g), which provisions are self-effectuating.

7. All real property taxes and assessments due in 2005 and before are seller’s responsibility. Real property taxes and assessments due for 2006 will be pro-rated to the date of closing on a calendar-year basis, with the seller being responsible for the portion of taxes and assessments due from January 1, 2006 to the closing date. The balance of the taxes and assessments for 2006 are buyer’s responsibility.

8. Out of the sale proceeds, the Trustee proposes to disburse the following amounts to the following parties at the time of closing on such sale:

- a. Payoff of the first mortgage to Countrywide Home Loans, Inc., in the amount of \$98,127.09

together with contract interest thereon to the closing date.

- b. Payment for the premium for a Standard ALTA owners policy of title insurance in the amount of the purchase price.
- c. Payment of real estate taxes and assessments, as described above.
- d. Payment of real estate transfer taxes and revenue stamps due on such sale.
- e. Payment of a real estate sales commission to Craig Dunlap & Associates of seven percent (7%) of the purchase price or \$8,393.00, based upon a sales price of \$119,900.00.
- f. Payment of one-half of all closing costs and all miscellaneous recording costs attributable to seller.

After payment of the aforesaid amounts, the balance of the sale proceeds will be held by the Trustee pending further order of this Court.

9. Prospective buyers may make arrangements for examination and inspection of this property by contacting Trustee's counsel at the address which appears at the foot of this Motion.

10. The sale of this property shall be made on an "AS-IS, WHERE-IS" basis, without representation or warranty, express or implied, of any kind, nature or description including, without limitation, any warranty by description or of merchantability, usability, habitability, or of fitness for any particular purpose. The seller shall not be required to inspect or test or report on the condition of the property being sold, or of the existence of any possible defects in the same, except as may be required by law and any defects which may be revealed by a commitment for title insurance. As the seller has not resided in the residence, he shall not be compelled to provide a lead-paint disclosure statement or sellers disclosure statement.

11. Except for easements and restriction of record, including restrictions set forth in the Master Deed as amended, the residence shall be sold free and clear of liens or claims thereon, with the interest of any party asserting a lien or claim against the residence being removed therefrom and attaching to the sale proceeds in the same order of rank, validity and priority as they presently may exist against such property.

12. The Trustee shall convey his interest in the residence to the buyer by way of a Trustee's Deed, which is in the nature of a Quit-Claim Deed. Likewise, his interest in any attached personal property shall be conveyed by a Trustee's Bill of Sale. Neither the Trustee's Deed nor Bill of Sale shall contain any warranty language.

13. Any costs for tests or inspections requested or desired by buyer shall be borne and otherwise paid by buyer, at buyer's expense. These include, but are not limited to, a survey, pest inspection, building inspection, well/septic inspection, percolation tests, radon tests, or any other inspections of any other nature.

14. The property shall be offered for sale in one (1) lot on a cash basis with bids commencing at the amount of the offer of Smith; i.e., \$119,000.00. Thereafter, bids will be taken in increments of no less than \$2,000.00, with the initial offer to be at least \$125,000.00. Contingent bids will not be received. Before the Trustee will accept higher and competing offers, however, he will require that any potential bidder provide proof of their financial ability to make an offer of \$125,000.00 or more by way of a bank letter of credit or similar document.

15. After the sale has been approved by the Bankruptcy Court, the buyer shall, within three (3) business days, sign a buy/sell agreement in accordance with the terms recited herein, or an addendum to the purchase agreement if Smith is the successful bidder, but for a higher purchaser price, as the case may be.

16. The buyer shall be required to deposit with the Trustee the sum of \$1,000.00, representing an earnest money deposit against the purchase price, immediately after the sale is orally confirmed by the Bankruptcy Court. Such earnest money deposit is subject to forfeiture, as seller's liquidated damages, if closing does not occur due to the fault of the buyer. If seller cannot seasonably close, then buyer's earnest money deposit shall be returned and buyer shall have no further claims against seller or this estate. The balance of the purchase price is to be paid at closing to be scheduled as soon thereafter as is practicable. It is anticipated that closing will take place by no later than July 15, 2006, unless extended pursuant to agreement of the parties.

17. Occupancy and use of the subject property will be delivered to the buyer at the time of closing.

18. All expenses of custody, protection and insurance of this property, as well as the expenses of sale, including administrative and all legal expenses of the bankruptcy proceeding relating to the protection and sale of said real property, shall be charged against the sale proceeds, with priority over all claims, save for those identified in paragraph 8 above, upon which distributions are to be made, per 11 USC § 506(c).

19. Your Movant believes that the sale of such residence, as aforesaid, or to a higher bidder on such terms, is in the best interest of the creditors in this estate and should be approved.

WHEREFORE, YOUR MOVANT PRAYS that creditors herein and other interested parties be required to object or otherwise show cause, on a time and date certain, why the above-described residence should not be sold, as aforesaid, to Christopher J. Smith, or to such other party who might submit a higher bid thereon; why the Trustee should not be allowed to disburse, out of the sale proceeds at closing, the amounts recited above, together with any applicable interest or penalties thereon; why he should not be allowed to sign the purchase agreement and any other necessary closing documents including, but not limited to, a Trustee's Deed, Bill of Sale, and closing statement; and why he should not have such other and further relief as this Court might deem just, equitable and proper.

Dated: May 31, 2006

DAY & SAWDEY, P.C.
Attorneys for Trustee

By _____/s/_____

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